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No. 97-334

In The

Supreme Court of the United States

October Term, 1996

CHARLES GEORGE MILDEN and SUSAN PATRICIA MILDEN,

Petitioners,

vs.

JAMES J. JOSEPH, Chapter 7 Trustee,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Although argued in terms of constitutional violations, Petitioners' primary complaint is that the bankruptcy court did not rule in their favor. The following are the actual questions presented by this Petition:

1. Does the federal district court, the court of appeals, or this Court have jurisdiction to entertain the merits of Petitioners' appeal from the bankruptcy court's order converting their case from chapter 11 to chapter 7, where Petitioners failed to file a notice of appeal from that order?

2. Did the bankruptcy court have subject matter jurisdiction to approve a settlement of a state court action filed pre-petition by Petitioners?

3. Did the bankruptcy court have subject matter jurisdiction to approve the Trustee's use of the stock of a corporation, wholly owned by Petitioners pre-petition, to effect a release of the corporation's claims against third parties?

LIST OF PARTIES

Respondents have no parent companies or non-wholly owned subsidiaries.

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INTRODUCTION

Petitioners attempt to invoke weighty constitutional concerns as grounds for consideration of their Petition for Writ of Certiorari. Petitioners assert that the result of this case impacts the underpinnings of our system of law and basic fundamental rights. The record below demonstrates, however, Petitioners' failure to meet any of the grounds stated in Rule 10 of the Supreme Court for this Court's discretionary review.

The extreme rhetoric of the Petition masks Petitioners' primary complaint: their basic dissatisfaction with the bankruptcy court's rulings. Unfortunately for Petitioners, the challenged orders of the bankruptcy court find clear textual support in the statutory scheme enacted by Congress pursuant to an expressly enumerated power in Article I of the United States Constitution, as well as in the factual record. As a result, both the district court and the Ninth Circuit Court of Appeals reviewed and affirmed on appeal the bankruptcy court's actions in: (1) converting Petitioners' case from chapter 11 to chapter 7; (2) approving the estate's settlement of Petitioners' pre-petition state court claims; and (3) approving the trustee's use of Petitioners' stock, acquired pre-petition, to effect a release of claims.

As the record below amply reflects, Petitioners' plight is of their own making. Rather than face the jury they now claim to demand, Petitioners voluntarily chose to initiate this bankruptcy proceeding. Rather than comply with the requirements expected of all honest debtors, Petitioners repeatedly chose to disregard them. Denied the ability to manipulate the bankruptcy process to their own ends, Petitioners now pursue a legal crusade against imagined antagonists, refusing even to concede the legitimate jurisdiction of the bankruptcy and district courts over property of a debtor's estate.

Petitioners' mere dissatisfaction with the consequences of their own conduct gives rise to no constitutional issues and fails to amount to an infringement of their due process rights. The bankruptcy court decided this case in a wholly proper fashion, consistent with Petitioners' constitutional rights. This Court should deny the Petition.

STATEMENT OF THE CASE

Petitioners paint this case as one involving numerous and substantial deprivations of their constitutionally guaranteed rights. In an effort to bolster this claim, Petitioners present a confused and tortured description of the procedural history of this case. Petitioners' description is replete with inaccuracies and matters not reflected in the record on appeal to the United States Court of Appeals for the Ninth Circuit. Although lengthy, the actual procedural history is much simpler than Petitioners acknowledge. More importantly, the record demonstrates that the bankruptcy court entered every challenged order in conformity with established statutory authority, and that Petitioners have presented no justification for this Court to exercise its discretionary review.

A. Proceedings In The Superior Court.

On December 31, 1990, Respondent State of the Art, Inc. filed a complaint in the Superior Court of the State of California for the County of Orange against Petitioner Charles Milden. That complaint sought damages and injunctive relief for, *inter alia*, breach of contract and misappropriation of trade secrets. On March 4, 1991, Petitioners filed a separate action against Respondents State of the Art, David S. Samuels, George Riviere, David W. Hanna (collectively "SOTA"), Robertson Stephens and Company, L.L.C. ("RSC") and other named defendants. Petitioners sought damages for, *inter alia*, intentional and

negligent infliction of emotional distress, and rescission of State of the Art's prior repurchase of Milden's State of the Art stock (the "Pre-Petition Claims").

B. Proceedings In The Bankruptcy Court.

1. Filing and Conversion.

On October 24, 1991, approximately two months before the scheduled trial of State of the Art's lawsuit against Mr. Milden, Petitioners filed a chapter 11 petition in the United States Bankruptcy Court for the Central District of California. Petitioners' original schedules failed to designate their Pre-Petition Claims as assets exempt from administration.

On three occasions over the course of the next year, the Office of the United States trustee moved to dismiss or convert Petitioners' chapter 11 case due to, *inter alia*, Petitioners' failure to comply with the reporting requirements established for all chapter 11 debtors. On October 8, 1992, the bankruptcy court granted the United States trustee's third motion, and converted Petitioners' bankruptcy case from chapter 11 to chapter 7. The court appointed a trustee (the "Trustee") to liquidate Petitioners' estate (the "Estate").

Petitioners moved for reconsideration of the conversion order. On November 10, 1992, the bankruptcy court denied Petitioners' Motion. Petitioners failed to file any notice of appeal from the order converting their chapter 11 case.

Petitioners assert that the bankruptcy court converted their chapter 11 case "two weeks" prior to the hearing on confirmation of Petitioners' plan of reorganization. (Petition, p. 8.) Petitioners seriously misstate the record. Petitioners failed to even obtain court approval of a disclosure statement (the first step in plan

confirmation), let alone circulate a plan of reorganization to creditors for voting. The hearing presumably referred to by Petitioners was actually calendared in early November 1992, nearly four weeks after the hearing on the motion to convert. This was a continued hearing on the adequacy of the Petitioners' disclosure statement. Petitioners had yet to even file their second amended disclosure statement, as ordered by the bankruptcy court on September 17, 1992.

2. Compromises of Controversies.

Approximately two months after the conversion, the Trustee, on behalf of the Estate, settled the Pre-Petition Claims against SOTA,[1] RSC[2], and co-defendant T.A. Associates Partners ("T/A"). Pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure, and after numerous hearings in which Petitioners actively participated, the bankruptcy court approved the Estate's settlement with RSC on March 24, 1993, and the settlements with SOTA and T/A on May 19, 1993. Petitioners filed a notice of appeal from these settlement orders on May 24, 1993.

On April 13, 1994, the bankruptcy court entered an order approving the Trustee's settlement with Frank A. Barcott

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1. SOTA agreed to release all of its claims against Petitioners and pay the Estate $100,000 in return for a release of all of the Pre-Petition Claims. SOTA recognized that, in light of Petitioners' bankruptcy and the accompanying lack of unencumbered assets, SOTA's further expenditure of legal fees likely would not result in a monetary recovery.

2. RSC agreed to pay the Estate $10,000 in return for a release of all of the Pre-Petition Claims. At a mandatory settlement conference held on July 17, 1992 in the Superior Court actions, Judge Thomas Thrasher of the Orange County Superior Court recommended that RSC pay $5,000 as "nuisance value" to settle the Petitioners' claims against them.

Security and Investigations ("Barcott"), the final defendant in the Petitioners' Superior Court action. Petitioners filed a notice of appeal from this settlement order on April 18, 1994.

3. Motions for Turnover Order and to Use Property of the Estate out of the Ordinary Course of Business.

Pursuant to its settlement with SOTA, the Estate agreed to release all Pre-Petition Claims against SOTA belonging to Petitioners' wholly owned corporation, In-Communications, Inc. ("ICI").[3] In furtherance of the Estate's obligations, the Trustee moved the bankruptcy court for an order directing Petitioners to turn over, *inter alia*, all documents in Petitioners' possession concerning ICI, including Petitioners' original stock certificates. Petitioners refused to comply with the bankruptcy court's order, and, on May 13, 1993, filed a notice of appeal.

The Trustee, on behalf of the Estate and as the sole shareholder of ICI by virtue of the Petitioners' bankruptcy filing and case conversion, later voted the Estate's shares to amend the bylaws of ICI, appoint new directors, and approve ICI's release of ICI's pre-petition claims against SOTA. The Trustee's action did not affect ICI's post-petition claims, if any.

On July 19, 1993, the Trustee sought bankruptcy court approval of his use of the Estate's interest in ICI. On September 29, 1993, the bankruptcy court entered an order granting the Trustee's motion and specifically ratified the Trustee's execution of all corporate formalities necessary for ICI to release its pre-petition claims against SOTA. On October 12, 1993, Petitioners appealed that order.

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3. The release from ICI ensured a termination of all litigation between Petitioners and SOTA. In an abundance of caution, SOTA sought to avoid a subsequent lawsuit by a Petitioner-controlled entity, re-alleging previously released claims.

4. District Court Appeals.

In two separate decisions, entered June 6, 1994, and September 20, 1994, the United States District Court for the Central District of California, the Honorable Gary L. Taylor presiding, affirmed all of the bankruptcy court's orders from which Petitioners had noticed appeals. Judge Taylor refused to address Petitioners' asserted errors regarding the conversion of their chapter 11 case. Judge Taylor held that Petitioners' failure to notice an appeal from that order deprived him of jurisdiction to consider the order's merits. Petitioners noticed appeals from Judge Taylor's rulings to the Court of Appeals for the Ninth Circuit.

5. Ninth Circuit Appeal.

In an unpublished decision entered April 16, 1997, the court of appeals affirmed Judge Taylor's decisions. In its opinion, the court of appeals also refused to consider the merits of the order converting Petitioners' chapter 11 case, because Petitioners failed to file a timely notice of appeal.

REASONS FOR DENYING THE WRIT

Petitioners devote the majority of their argument in support of certiorari to contentions that the bankruptcy court lacked jurisdiction over the Estate, and in particular, over the Pre-Petition Claims. Petitioners specifically contend that: (1) the bankruptcy court unlawfully converted their chapter 11 case to a case under chapter 7; (2) as a result of the illegal conversion, any subsequent orders affecting property of the Estate exceeded the bankruptcy court's jurisdiction; and (3) the bankruptcy court lacked subject matter jurisdiction to approve the settlement of the Pre-Petition Claims.

For the reasons stated below, the bankruptcy court lawfully converted Petitioners' case; the bankruptcy court possessed subject matter jurisdiction to enter each of the challenged orders; and Petitioners' contentions lack merit as well as supporting legal authority. Petitioners certainly advance none of the reasons, as set forth in Rule 10 of the Supreme Court of the United States, for this Court to exercise its discretionary review of this case.

I.

THE PROVISIONS OF TITLE 11 SUPERSEDE ANY STATE-CREATED RIGHT PETITIONERS POSSESSED IN THEIR PRE-PETITION CLAIMS UPON THE FILING OF PETITIONERS' BANKRUPTCY PETITION.

Petitioners contend that the Trustee and bankruptcy court unconstitutionally deprived them of property rights created by California law. This argument lacks any basis in the United States Constitution or federal law. Article I of the United States Constitution specifically grants to Congress the power to establish uniform laws on the subject of bankruptcy. United States Const. art. I, § 8, cl. 4. Article I particularly authorizes Congress to provide for a uniform set of rules and procedures for the administration of bankruptcy estates. *New York v. Irving Trust Co.*, 288 U.S. 329, 332 (1933). Any state law to the contrary must yield to the plenary bankruptcy power of Congress. United States Const. art. VI, cl. 2; *National Collection Agency, Inc. v. Trahan*, 624 F.2d 906 (9th Cir. 1980).

Petitioners' argument that Congress lacks the power to abrogate state-created rights when providing for a uniform system of bankruptcy laws contradicts the express terms of Articles I and VI of the United States Constitution. Bankruptcy proceedings constantly modify and affect property rights established by state law. *Wright v. Union Cent. Life Ins. Co.*,

304 U.S. 502, 517 (1938). As a result, property rights gain no absolute invoidability in the bankruptcy court simply because they were created or protected by state law. *Id.* at 518. If Congress acts within its bankruptcy power, it may authorize the bankruptcy court to affect these property rights. *Id.*; *See also In re Farmers Markets, Inc.*, 792 F.2d 1400, 1403 (9th Cir. 1986).

Petitioners also contend that the property of a chapter 11 "debtor in possession" is not subject to the bankruptcy or district court's subject matter jurisdiction under title 11. This argument also lacks any basis in federal law. The bankruptcy jurisdictional statutes draw no distinction between filings under the different chapters of title 11. 28 U.S.C. §§ 1334, 157 (1993). Section 1334(e) of title 28 provides that the district court in which "a case under title 11" is commenced or pending shall have exclusive jurisdiction of property of the debtor and the estate, while section 157(b)(2)(A) grants bankruptcy courts subject matter jurisdiction over the "administration of the estate."

The provisions of title 11 expressly contradict Petitioners' purported distinction between the status of "property of the estate" in chapter 11 and chapter 7. A chapter 11 "debtor in possession" has nearly the same rights and obligations as a chapter 7 or chapter 11 trustee. 11 U.S.C. §§ 1106, 1107 (1993); *In re March*, 995 F.2d 32, 34 (4th Cir. 1993). Section 103(a) of title 11 provides that the provisions of chapter 5, including section 541 (property of the estate), apply in cases filed under *both* chapter 7 and chapter 11.

Petitioners suffered no cognizable deprivation of any right to property under either federal or state law. This Court should therefore deny the Petition.

II.

THE ORDER CONVERTING PETITIONERS' CHAPTER 11 CASE WAS PROPER AND CONSTITUTED A FINAL ORDER FROM WHICH PETITIONERS FAILED TO FILE A TIMELY NOTICE OF APPEAL.

A. This Court, Like the Courts Below, Lacks Jurisdiction to Entertain the Merits of Petitioners' Appeal from the Order of Conversion.

Petitioners' vehemently contend that the bankruptcy court improperly converted their chapter 11 case to a proceeding under chapter 7. Petitioners, however, failed to notice an appeal from the order converting their case. An aggrieved party must file a notice of appeal from a final order or judgment of a bankruptcy court within ten (10) days of the date of the entry of the order or judgment appealed from, or if the party timely files a motion under Rule 9023 of the Federal Rules of Bankruptcy Procedure within ten (10) days from the entry of the order denying that motion. Fed. R. Bankr. P. 8001(a), 8002(b) (Supp. 1997); *In re Curry and Sorensen, Inc.*, 57 B.R. 824, 826-27 (B.A.P. 9th Cir. 1986).

The time limits established for filing a notice of appeal are mandatory and jurisdictional. *In re Souza*, 795 F.2d 855, 857 (9th Cir. 1986); *Curry and Sorensen*, 57 B.R. at 826. The order converting Petitioners' case constituted a final order. *In re Firstcent Shopping Center, Inc.*, 141 B.R. 546, 550 (S.D.N.Y. 1992); (order converting case is a final and appealable order); *In re Rebeor*, 89 B.R. 314, 321 (Bankr. N.D.N.Y 1988) (same). As Petitioners failed to file any notice of appeal from the order converting their chapter 11 case, this Court, like the district court and the court of appeals, lacks jurisdiction to entertain Petitioners' argument on the merits.

B. Petitioners' Attempted Collateral Attack of the Conversion Order is Improper.

Although they fail expressly to assert any justification for their failure to seek timely review of the Conversion Order, Petitioners assert that the Order is void for lack of subject matter jurisdiction. In particular, Petitioners argue that a motion to convert a chapter 11 case over the objections of a debtor necessitates the same numerical quota of moving creditors and finding of insolvency as would be required to commence an involuntary case against a debtor under Bankruptcy Code section 303. The requirements of section 303 were not met, Petitioners assert, and therefore the bankruptcy court lacked subject matter jurisdiction to convert their case — a defect which may be raised at any time. (Petition, p. 11.)

Petitioners' argument blurs the distinction between *void* and *voidable* orders. Eligibility or qualification to be a debtor lacks jurisdictional significance. *First Brandon Nat. Bank v. Kerwin-White,* 109 B.R. 626, 629 (D. Vt. 1990); *In re Johnson,* 13 B.R. 342, 347 (Bankr. D. Minn. 1981). The number or status of creditors filing a petition under section 303 is, as a matter of law, completely unrelated to the bankruptcy court's subject matter jurisdiction. *In re Mason,* 709 F.2d 1313, 1318 (9th Cir. 1983) (filing of a petition by only two creditors does not deprive bankruptcy court of jurisdiction); *In re Hutter Assoc., Inc.,* 138 B.R. 512, 516 (W.D. Va. 1992) (filing of a petition by one creditor against a debtor with more than twelve holders of claims does not deprive bankruptcy court of jurisdiction).

The filing of the petition that commences a bankruptcy case is the act that gives the bankruptcy court jurisdiction. *Johnson,* 13 B.R. at 347; *see also Canute Steamship Co. v. Pittsburgh Coal Co.,* 263 U.S. 244, 248 (1923) ("[T]he filing of a petition, sufficient on its face, . . . clearly gives the bankruptcy court

jurisdiction of the proceeding."). Defects in an involuntary petition are merely defenses, which debtors waive if they do not timely assert them. *Mason*, 709 F.2d at 1318; *Hutter Assoc.*, 138 B.R. at 516; *In re Barth*, 109 B.R. 570, 574 (Bankr. D. Conn. 1990).

By filing their chapter 11 petition, Petitioners consented to the bankruptcy court's jurisdiction over Petitioners and the Estate. *Wilson v. Bill Barry Enterprises, Inc.*, 822 F.2d 859, 861 (9th Cir. 1987). Pursuant to 28 U.S.C. § 157(b), the bankruptcy court possessed jurisdiction over all "core" proceedings in the Petitioners' case. Motions to dismiss or convert constitute "core" proceedings, as these motions involve the administration of a debtor's estate and affect the adjustment of the debtor-creditor relationship. *In re Hemex Liquid. Trust*, 129 B.R. 91, 92 (Bankr. W.D. La. 1991).

The bankruptcy court therefore possessed subject matter jurisdiction to convert the Petitioners' case to chapter 7. Any contentions Petitioners may have had regarding the propriety of the conversion fail to amount to jurisdictional defects. The order of conversion, therefore, constitutes a valid and final order.

C. Petitioners' Argument Misreads the Express Terms of 11 U.S.C. § 1112.

Petitioners base their collateral attack against the conversion order on subdivision (f) of 11 U.S.C. § 1112, which prohibits conversion to a particular chapter "unless the debtor may be a debtor under such chapter." Petitioners argue that, because the United States trustee could not have filed an involuntary petition under chapter 7 against them under 11 U.S.C. § 303(b), the bankruptcy court could not involuntarily convert their chapter 11 case. Petitioners also assert that an involuntary conversion requires the same determination of "insolvency" as a petition under 11 U.S.C. § 303(h). Petitioners are wrong.

The purported parallel between sections 303 and 1112 disregards, and conflicts with, the clear meaning of section 1112. Section 1112(b) requires neither a finding of insolvency nor a numerical quota of creditors who must file or join a motion to convert. Section 1112(b) merely provides that a motion to convert may be brought by "a party in interest or the United States trustee[,]" and the court, in ordering a conversion, need only determine the existence of the requisite "cause."

Petitioners' argument also conflicts with the clear meaning of section 1112(f). That section does not restrict conversion to a chapter "under which a petition could be filed against the debtor." The court only may not convert a case, "unless the debtor *may be a debtor* under such chapter." 11 U.S.C. § 1112(f) (1993) [emphasis added]. Specific statutory language defines who "may be a debtor" under chapter 7. Section 109(b) provides that any person, other than railroads, insurance companies and lending/depository institutions, may be a chapter 7 debtor. Petitioners are "persons" as defined in section 101(41), and do not fall into any of the exclusive categories contained in section 109(b)(1)-(3). The bankruptcy court relied on clear, express statutory authority in converting Petitioners' chapter 11 case to a case under chapter 7 on motion of the United States trustee. This Court should deny the Petition.

III.

THE BANKRUPTCY COURT ACTED WITHIN ITS JURISDICTION IN APPROVING A COMPROMISE OF PETITIONERS' PRE-PETITION CLAIMS.

A. The Trustee Possessed Authority to Settle the Pre-Petition Claims.

When Petitioners filed their chapter 11 petition, the Pre-Petition claims became property of the Estate. 11 U.S.C. § 541(a)(1) (1993) (upon the filing of a petition "all legal or equitable interests of the debtor" become property of the estate); *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205 n.9 (1983) (causes of action are property of the estate); *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705 (9th Cir. 1986) (same). Upon the conversion of the case to a chapter 7 proceeding, the Trustee must "collect and reduce to money the property of the estate for which such trustee serves and close such estate as expeditiously as is compatible with the best interests of the parties in interest." 11 U.S.C. § 704(l) (1993). This mandate required that the Trustee seek resolution of the Pre-Petition Claims, which the Trustee did by settling them.

Petitioners, dissatisfied with the course of events flowing from their voluntary decision to petition for bankruptcy protection, concoct a fanciful scheme of intrigue and deception. According to Petitioners, the Trustee conspired with the other parties so that the Trustee could "walk away with his pockets full," while releasing the other parties of any liability. Petitioners offer no evidence whatsoever, much less point to any evidence in the record, to support this theory. The actual facts of this case, as set forth in the record, are fairly routine and certainly fail to call into question the underpinnings of the United States Constitution. Petitioners voluntarily filed a chapter 11 petition,

which the bankruptcy court properly converted to a chapter 7 proceeding. Upon conversion, the court appointed a trustee, and that Trustee acted, as required, to expeditiously liquidate Petitioners' Estate for the benefit of Petitioners' creditors. These actions necessarily included settling the Pre-Petition Claims.

B. The Bankruptcy Court Properly Approved the Trustee's Settlement of the Pre-Petition Claims.

Petitioners take issue with the ninth circuit's affirmance of the orders approving the settlements of the Pre-Petition Claims. Their argument fails completely in light of the facts of these proceedings, as the argument rests upon the faulty assumption that Petitioners remained chapter 11 "debtors in possession." As discussed above, the bankruptcy court properly converted Petitioners' chapter 11 case to a proceeding under chapter 7; thus, the Trustee's liquidation of the Pre-Petition Claims was an otherwise straightforward administration of Petitioners' bankruptcy estate. The bankruptcy court supervised the Trustee's administration of Petitioners' Estate pursuant to the court's express statutory jurisdiction. "[M]atters concerning the administration of the estate" constitute core proceedings, 28 U.S.C. § 157(b)(2)(A), properly heard by the bankruptcy court. 28 U.S.C. § 157(b)(1) (1993). *See W.J. Services v. Commercial State Bank*, 990 F.2d 233, 234 (5th Cir. 1993) (approval of compromise of claims of the estate is a core proceeding subject to the jurisdiction of the bankruptcy court); *In re Holywell Corp.*, 913 F.2d 873, 881 (11th Cir. 1990) (same).

Petitioners assert that the bankruptcy court lacked jurisdiction to approve the settlement of the Pre-Petition Claims, because these included claims for personal injury. Petitioners also attack the ninth circuit for affirming the bankruptcy court's decision, suggesting that well established ninth circuit case law, *e.g.*, *Sierra Switchboard*, *supra*, violates their constitutional due

process protections.[4] However, precedent holding that the property of an estate in bankruptcy includes a debtor's personal injury causes of action does not amount to an unconstitutional aberration. It finds direct support in the Bankruptcy Code (11 U.S.C. § 541(a)), the decisional law of many circuits (*see e.g., Tignor v. Parkinson*, 729 F.2d 977, 980-81 (4th Cir. 1984); *Vreugdenhil v. Hoekstra*, 773 F.2d 213, 215 (8th Cir. 1985)) and the holdings of this Court. *E.g., United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205 n.9 (1983).

The bankruptcy court properly reviewed and approved the Trustee's settlement of the Pre-Petition Claims. No infringement on the sovereignty of the California courts occurred. In its review, the bankruptcy court specifically avoided an adjudication of the merits of the Pre-Petition Claims. The court only evaluated the Trustee's settlements "to determine if [they fell] below the lowest point in the range of reasonableness." *In re Hydronic Enterprise, Inc.*, 58 B.R. 363, 366 (Bankr. D.R.I. 1986). Such a review constituted a "core proceeding," well within the bankruptcy court's express jurisdiction. *See W.J. Services v. Commercial State Bank, supra*, 990 F.2d at 234; 11 U.S.C. § 105(a) (1993) (authorizing the bankruptcy court to issue any order, process or judgment needed to carry out the provisions of title 11).

Since liquidating and administering Petitioners' estate for the benefit of their creditors necessitated a resolution of the Pre-Petition claims, the Trustee acted properly and within his authority. It follows then that, as part of the administration of the estate, and as a core proceeding, the bankruptcy court possessed jurisdiction to approve the settlements.

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4. Similarly, Petitioners' suggestion that section 157(b)(5) of Title 28 guarantees their right to a jury trial of personal injury tort claims is misplaced. This section simply *permits* a jury trial for claims not settled in bankruptcy, such as those in which the debtor is the defendant.

IV.

THE BANKRUPTCY COURT PROPERLY APPROVED THE TRUSTEE'S USE OF THE STOCK OF PETITIONERS' WHOLLY OWNED CORPORATION.

In July 1993, the trustee exercised the Estate's interest in Petitioners' wholly owned corporation, In-Communications, Inc. ("ICI"), to effectuate a release of ICI's pre-petition claims, if any, against Respondents. The bankruptcy court then approved the Trustee's use of Petitioners' interest in the ICI stock, pursuant to 11 U.S.C. § 363(b). Petitioners challenge the bankruptcy court's Order on the grounds that the Trustee's actions violated ICI's corporate by-laws and California corporate law. Petitioners provide absolutely no authority, in either fact or law, for their positions. Their arguments must fail.

Petitioners' Estate included all property in which they had a legal or equitable interest at the time they sought bankruptcy protection. 11 U.S.C. § 541(a)(1) (1993). Petitioners' Estate included all of the then-outstanding shares in ICI. *See In re Deak & Co.*, 63 B.R. 422, 427 (Bankr. S.D.N.Y. 1986). A corporation wholly owned by a debtor upon the filing of a bankruptcy petition becomes an asset of the bankruptcy estate. *In re Baker*, 68 B.R. 360, 363 (Bankr. D. Or. 1986). The bankruptcy court accordingly possessed jurisdiction to approve the Trustee's administration of this Estate asset.

Petitioners assert that the Trustee's actions violated ICI's corporate bylaws and California law. Petitioners fail to cite to any evidence in the record, nor have they presented any authority, in support of this argument. To the contrary, as the sole shareholder of ICI by virtue of the conversion of Petitioners' chapter 11 case, California Corporations Code section 603 (actions without meeting upon consent of shareholder)

specifically authorized the Trustee's actions. This Court should deny the Petition.

CONCLUSION

Petitioners' various arguments that the challenged bankruptcy court orders deprived Petitioners of their constitutional rights lack any merit. Pursuant to Articles I and VI of the United States Constitution, Congress retains authority to provide for a uniform bankruptcy system, even at the expense of a debtor's state-created property rights. Congress, in turn, granted to the district and bankruptcy courts express jurisdiction over the property and cases of title 11 debtors (whether they be debtors or "debtors in possession").

In this case, the bankruptcy court acted well within this express statutory grant of authority. The bankruptcy court properly exercised its sound discretion, pursuant to section 1112 of title 11, in converting Petitioners' chapter 11 case to a proceeding under chapter 7. Petitioners waived their right to challenge that exercise of discretion by failing to file a notice of appeal. Petitioners' contention that the court unlawfully converted their case, thereby divesting itself of jurisdiction, lacks any legal authority and contradicts Congress's express and constitutional statutory scheme.

Petitioners' contention that the bankruptcy court orders compromising the Pre-Petition Claims deprived Petitioners of property without due process finds no support in existing law. The courts below did not unconstitutionally deprive Petitioners of any right to pursue the Pre-Petition Claims. Upon Petitioners' voluntary filing of a chapter 11 petition, the ability to pursue those claims vested in Petitioners' Estate, subject to the statutory jurisdiction of the bankruptcy court.

The bankruptcy court also properly authorized the Trustee to vote Petitioners' shares in their wholly owned corporation. The shares constituted property of Petitioners' Estate, subject by express grant of statutory authority, to the Trustee's administration, upon approval of the bankruptcy court.

Petitioners have failed to justify this Court's discretionary review of their case. This Court should deny the Petition.

Respectfully submitted,

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